

ABSTRACT

Cooperation - Large Sized Cooperative Society, Chataparru, West Godavari District - Loan taken by Sri Gutta Venkata Subba Rao - Revision Petition filed before Government - Disposed - Orders - Issued.

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AGRICULTURE AND COOPERATION (COOP.V) DEPARTMENT

G.O.Rt.No.
2004.

Dated -06-

Read the following:-

1. G.O.Rt.No.2689 Food and Agri. (Coop.III) Dept., dated 31.12.1991.
2. From the High Court of Judicature, A.P., Hyderabad Orders in W.P.No.1063/1992,dated 4.10.2001.
3. Govt. Memo.No.17643/Coop.V(2)/2001, dated.17.5.2003.
4. From the DCO., W.G.Dist. Lr.Rc.No.2277/2001-C, dated.18.01.2003.
5. From the DCO., West.Godavari Dist. Lr.Rc.No.845/92-F, dt.2.7.2003.
6. From the DCO., West Godavari Dist. Lr.Rc.No.845/92-F, dt.29.4.2004.

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ORDER :

Sri Gutta Venakata Subba Rao, a member of Large Sized Coop. Society, Chataparru, West Godavari District has pledged 7.00 acres of land in R.S.No.488, Jalipudi, Village of his wet land as security to the society and took loan from the Society for a sum of Rs.2918-14 but he could not discharge the entire amount before the due dates and the society preferred an arbitration reference against the defaulter. Arbitration proceedings were issued and the L.S.C.S. Chettapuru filed Executive Petition to recover the defaulted amount

from Sri G.V.Subba Rao. In execution of E.P., the entire land of 7.00 acres was brought to sale and sale was conducted on 05-02-1966.

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Before confirmation of the sale Sri G. Venkata Subba Rao filed an objection petition before the Deputy Registrar of Cooperative Societies, Eluru and the same was rejected on 18.4.1966 and the sale was confirmed in Proceedings No.CEP No.147/63-64, Dated 10.5.1966. The Applicant aggrieved by the orders of the Dy. Registrar of Coop. Societies, Eluru filed a Revision Petition before the Registrar of Cooperative Societies and the same was also rejected on 15.6.1976. Aggrieved by the two orders the applicant filed a Revision Petition before the Government on 12.7.1976 and 25/10.1976 requested the Government to set aside the orders of the Registrar of Coop. Societies and to stay the operation of the orders of the Dy. Registrar of Coop. Societies passed in C.E.P.No.147/63-64, dated 5.2.1966 pending disposal of the petition. The Government examined the matter and rejected the revision petition in G.O.Rt.No.666 F&A(Coop.III) Dept., dated 19.4.1978 on the ground that it was not reasonable to exercise the revisional powers after a lapse of nearly (12) years after sale held on 5.2.1966.

Aggrieved by the above Government orders Sri G. Venkata Subba Rao, the borrower filed Writ Petition No.3370/79 in the High Court of Judicature. The Hon'ble High Court set aside the orders in G.O.Rt.No.666 F&A (Coop.III) Dept., dated 19.04.1978 and directed the Government to issue necessary orders in terms of the orders passed on 29.1.1978 by the then Hon'ble Minister for Cooperation and to implement the same.

Smt. K. Tara Bai, a relative of the bidder filed W.A.No.1109/1984 in the High Court against the orders of High Court which was allowed and remitted back to Government for fresh disposal. The Government after hearing both the parties have issued orders in the G.O.Rt.No.1535, F&A (Coop.III) Dept., dated 24.8.1988, by set asading the earlier orders issued in G.O.Rt.No.666, dated.19.4.1978, are allowed the

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Revision Petition in favour of the borrower. Against said orders of Government, Smt. K. Tara Bai filed W.A.No.14362/1987 in the High Court of A.P. and the High Court in their order dated 6.4.1989, allowed and remanded the case to Government directing to dispose the matter after giving opportunity to both the parties.

Government, after hearing the two parties, ordered in G.O.Rt.No.2689, dated 31.12.1991 that the sale of the property held on 5.2.1966 and the proceedings issued by the Registrar of Cooperative Societies were annulled and further ordered that the bid

amount received from Smt. K. Tara Bai be refunded to her by withdrawing the amount from the Government Treasury and the landed property be handed over to the legal heirs of Sri Gutta Venakta Subba Rao since they have paid all the dues to the society as per the financing agency's Notice. The Society reported that as per the above Government Orders, they handed over the landed property to the legal heirs on 10.9.1992.

Aggrieved by the orders in G.O.Rt.No.2689, dated 31.12.1991 Smt. K. Tara Bai a relative of the bidder filed writ petition in the High Court of the Judicature in Writ Petition No.1063/1992 in the Hon'ble High Court of Andhra Pradesh, Hyderabad questioning the Government order. The Hon'ble High Court in their judgment dated 4.10.2001, allowed the Writ Petition and remitted back to Government with a direction to dispose the Revision Petition by giving the reasons according to law.

In obedience to the orders of the Hon'ble High Court the Revision Petition has been taken by the Government and posted for hearing on 12.11.2003, 27.11.2003, 10.12.2003, 18.12.2003 and lastly on 20.03.2004.

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The gist of the contentions raised by the Revision Petition are as below.

There is no locus standi in case of Smt. K. Tara Bai, the wife of Late

VankineniVenkaiah i.e. Smt. Damayanti is the execution under the will. Smt. Tara Bai has no locus standi as the legal heir or successor to the estate of late Sri Venkineni Venkaiah to be the interested party in case of the present property purchased by him. The Principal Borrower had died inte-state. The dues owed by the borrower in an auction to the society were duly discharged and a Certificate was also issued to that effect by the Society as early 10.9.1986. The property in question was never in possession of the respondent and was delivered back by the society in 1992, formally. In the interregnum period, the land was in the possession of the Sale Officer. The Cooperative Act under Sub-Rule 16 of Rule 52 would provide only for a portion equivalent to the dues to be sold. The auction to sill the entire property is patently excessive.

The gist of contentions raised by the Respondent are as follows:

The Government is not just in entertaining the revision after a lapse of 12 years under Section 77 and for no valid reasons. The respondent filed Writ Petition in 1973 under the same grounds and agitated the issue and the same was on dismissed. The contention of the Revision Petitioner that the Writ Petitions were dismissed not on the merits but on the grounds of jurisdiction is not correct. The Revision Petition filed a petition before Registrar of Coop. Societies in 1976. No grounds of insanity at that stage as observed by Registrar

of Cooperative Societies were found. These grounds of insanity are preferred before Government now as an after thought. Revision is liable to be dismissed on grounds of limitation.

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After hearing the contentions put forward by both parties and carefully adducing the arguments and going through the records made available, following issues as below are framed and gone into exhaustively.

1. What are the dues to the society and whether the society has suffered any pecuniary loss?

At the present point of time, it would appear that there are no outstanding dues in case of the Revision Petitioner late Sri G.V.Subba Rao. It is evident that the society as early as 10-9-1986 had issued a no dues certificate. Therefore, the society has not suffered any loss. The credit policy over the years has been undergoing a change. Coercive collection is resorted to after exhausting all the avenues and as a last resort. It is also not the intention of Cooperative Law as enacted in A.P. Coop. Societies Act, 1964 to recover the dues by forcibly dispossessing the members, in a retributive manner by closing all the doors of settlement. In the instant case there has been a willingness on the part of the revision petitioner to settle

the dues. Action has been precipitated to put to auction a largestent of land then when would have met the dues.

2. Whether the steps taken for recovery of dues have been excessive?

The action taken that is auction of the land in tolto is excessive. Even justifying the recovery through coercive action, putting to auction the entire land is not at all justifiable. The sub-rule (16) of Rule 52 stipulates that no larger portion of immovable property shall be sold than may be sufficient to discharge the amount due with interest and expenses of attachment, by the sale officer. To recover a paltry sum of Rs.3443-07 determined as due by the borrower, Sri G.V.Subba Rao, total extent of land of 7.00 acres in SNo.488, Jalipudi Village Eluru West Godavari District was put to sale by the sale officer. Thus reveals that action taken is excessive and violative of Rule 52(16) of APCS Rules and the principles of natural justice.

3. With whom lies the possession of land in question?

This becomes a material fact. As per the report of District Cooperative Officer, Eluru, West Godavari District, sale confirmation in favour of Sri V. Venkaiah was made on 30.4.1966. Neither V.Venkaiah nor Smt K.Tara Bai wre put in possession of the land. The land was in possession of the sale officer notionally. The same land was handed over to the legal heirs of Sri G.V.Subba Rao in the year

1992 as per the Government order in G.O.Rt.No.2689, dated.31.12.1991 Therefore or superior rights or material right are accruing to respondent which fact needs to be taken into consideration.

4. Whether Govt. is right in entertaining a revision petition?

While there is considerable delay in determining the issues and this distance of time, Government is well within its competence to undertake such revision as being directed by the courts. Without appreciating the facts fully to decide solely on this issue would be a travesty of justice. There is need to find a finality to this long pending issue. Among the issues to be considered, this issue also needs to be fairly considered but not the sole consideration as argued by Smt. K. Tara Bai. As such, the period of delay in filing Revision Petition against sale is exempted and condoned under section 123 of APCS Act.

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5. Whether there is locus-standi for Smt. K. Tara Bai.

The evidence on record shows doesn't establish locus standi of Smt K. Tarabai to litigate on behalf of the auction purchaser late Sri Late V. Venkaiah.

The contention of legal heirs of Sri G.V.Subba Rao, is strengthened by the fact that he is fighting for possession of ancestral land whereas Smt. K.Tara Bai claim is that of a descendent of an auction purchaser. Both these claims have to be carefully and judiciously viewed. There is no evidence to show that Smt. K. Tarabai, was the bonafide auction purchaser or the legal heir of Sri late V.Venkaiah, the auction purchaser. As such, it is reasonable to conclude that she has no grievance, interest or right or title over the property purchased in auction by late Sri V. Venkaiah.

In conclusion cooperative, law discourages unremitting and vexatious litigations which causes undue hardship both financial and mental hardship to the members of the society and parties to the litigation. There is a need to put an end to this long and vexatious litigations. The legal heirs of Sri G.V.Subba Rao, fully entitled for possession of the land having discharged the liability long ago.

After verification of the papers available and on hearing of the versions of both the parties and after careful examination Government hereby decide the matter keeping in view of the High Court direction 2nd read above as follows:-

- A. Smt. K.Tara Bai, is entitled only for return of the amount of sale proceedings paid into the treasury upon proving her entitlement to receive an amount of Rs.24,800/- (Twenty four thousands and eight hundreds only) as legal heir or other wise of late V.Venkaiah, (amount paid during the auction).
- B. The land owner Sri G.V.Subba Rao, and his legal heirs are entitled to have full Rights and the land which was mortgaged to the Society and handed over back to Sri G.V.Subba Rao, by the Society who is the owner of the land.

The District Cooperative Officer/Divisional Cooperative Officer, West Godavari Eluru, is hereby directed to take action accordingly as decided by Government above.